IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.2281 OF 2005

Shabbir Ahmed Rafique Ahmed Petitioner

Vs.

The State of Maharashtra & ors. Respondents

Mrs.A.M.Z.Ansari for petitioner.
Mr.D.S.Mhaispurkar, APP for State.

CORAM: B.H.MARLAPALLE & SMT.R.S.DALVI,JJ.

Reserved on : 30th January 2006.

Pronounced on: 15th February 2006.

JUDGMENT (PER B.H.MARLAPALLE,J.)

1. This writ petition seeking a writ of habeas corpus or the directions in like manner impugns the order of detention dated 13-5-2005 passed by the Principal Secretary (Appeals and Secretary), Government of Maharashtra, Home Department and the Detaining Authority by invoking powers under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the Act"). The said order was served on the detenu on or about 20/5/2005 and he was taken in detention on that day. A communication bearing No. PSA - 1105/2/SPL-3(A) dated 13/5/2005 was also issued by the said Detaining Authority and served on him on or about 20/5/2005 along with the list of documents.

This communication had set out the statements and grounds of detention on the basis of which the impugned order was passed. Admittedly the copies of the documents mentioned in the list of documents were also served upon the detenu along with the detention order.

2. On 30/11/2004 the detenu was intercepted while he was at Module 2A Departure Hall of Chhatrapati Shivaji International Airport, Mumbai while he was to depart to Dubai and was proceeding to transit lounge after passing through the Immigration and Customs to board flight GF 057 for Dubai via Bahrain. He was holding Indian Passport No.A 4197422 and was questioned whether he was carrying any contraband such as foreign currency, Indian currency, diamonds, narcotic drugs etc., on his person or in his baggage, to which he replied in the negative. Not being satisfied with his reply, he was subjected to a check up along with the checked-in baggage and the operation resulted in the recovery of assorted foreign currency equal to Indian Rs.2,50,377/- from his shoes and Indian currency of Rs.17,61,000/- from a cardboard carton containing rotten custard apples from the checked-in baggage. The total amount

equivalent to Rs.20,11,377/- was seized under a panchanama in the reasonable belief that the same were attempted to be smuggled out of India and hence liable for confiscation under the provisions of the Customs Act, 1962 read with Foreign Exchange Management Act, 1999. His statement was recorded under Section 108 of the Customs Act on the same day and he was claimed to have admitted the possession, carriage, concealment and recovery of the currency under seizure. He is alleged to have stated that the currency under seizure was given to him by one Shabbir who stayed in Mumbra but he did not know his exact address. The detenu is stated to have said further that he met said Shabbir on 29-11-2004 on instructions from his friend Haji Shaikh from Dubai. He was taken in custody and produced before the learned Chief Metropolitan Magistrate who was pleased to release him on bail subsequently on 10-12-2004. Admittedly his passport was also seized as soon as he was taken in custody on 30-11-2004. His statements were recorded on 13-12-2004, 14-12-2004, 16-12-2004, 22-12-2004, 29-12-2004 and 31-1-2005, before the impugned order dated 13-5-2005 was passed.

3. The main grounds of challenge to the detention

order as set out in the petition and reiterated by the learned counsel in her oral arguments advanced before us are as under:

(A) The detention order was issued belatedly i.e. after a period of more than five months on his release on bail on 10-12-2004 and the delay caused was not only inordinate, lethargic but was inexcusable and colossal thereby vitiating the order of detention. The live-link was snapped and the credible chain was broken on account of the delay caused in issuing the order of detention more so when the grounds of detention were not proximate to the alleged prejudicial activities on the basis of which the impugned order was passed.

(B) At every pocket in the process of passing the detention order, there was delay which has not been explained at all by the Detaining Authority and on that ground also the detention order is required to be set aside. The detention order suffers from the vice of non-application of mind and the satisfaction arrived at by the Detaining Authority is sham and fabricated.

(C) While passing the detention order the retractions dated 1-12-2004 and 31-12-2004 submitted by the detenu have not been considered by the Detaining Authority while setting out the grounds of detention and this itself has severely impaired the detention order warranting the same to be quashed and set aside. The detention order is not preventive in nature but in fact it is punitive in character.

(D) The representation dated 29-6-2005 submitted by the detenu was forwarded by the Superintendent of Nashik Road Central Prison to the Detaining Authority as well and the same was considered and rejected belatedly vide the order dated 26-7-2005 and the said order was served on the detenu for the first time on 8-8-05. The delay caused in deciding the representation by the Detaining Authority and serving the order of its rejection suffer from the delays which have not been explained satisfactorily and this resulted in violation of the guarantee under Article 22(5) of the Constitution.

(E) The detenu had also submitted representations to the State of Maharashtra on 12-9-2005 and 19-9-2005 and the same came to be rejected vide order

dated 18-10-2005 which was received by the detenu on 20-10-2005 at the Nashik Road Central Prison. This delay caused in deciding the representations submitted under Section 11 of the Act has also vitiated the detention order as the said delay could not be explained satisfactorily and thus the protection under Article 22(4) and 22(5) of the Constitution has been denied to the petitioner by the respondents. On these grounds also the impugned order is required to be quashed and set aside.

4. The Detaining Authority has filed an affidavit-in-reply and while opposing the petition has reiterated that the detention order does not suffer from any delays, non-application of mind, malice or violation of the Constitutional guarantee under Article 22. Affidavit-in-reply has also been filed by the Under Secretary to the Government of Maharashtra stating that the State Government had referred the case of the detenu to the Advisory Board as required under Section 8(b) of the Act on 8-6-2005 and the Advisory Board had interviewed the detenu. The report and opinion of the Advisory Board dated 2-8-2005 holding that there was sufficient cause for detention was received in the Home Department on the

same day. The representation dated 29-6-2005 was considered by the Additional Chief Secretary (Home) along with the report submitted by the Advisory Board and confirmation order dated 8-8-2005 was passed under Section 8(f) of the Act and the said order was communicated to the detenu on 12-8-2005. There is an additional affidavit filed by the Under Secretary to the Government of Maharashtra, Home Department in which it has been stated that the representations dated 12-9-2005 and 19-9-2005 submitted by the detenu while under detention were duly considered and rejected on 18-10-2005. There was no unexplained delay in processing and deciding the said representations and the explanation was satisfactory. For all these reasons, the respondents have prayed for the dismissal of the petition.

5. The law of preventive detention is a drastic law as it authorises detentions without trial in a Court of law and is in a way an encroachment on the liberty of an individual which is the cherished freedom guaranteed by our Constitution. At the same time the need for such a law in larger public or national interest has been recognised by our Constitution by providing certain minimum safeguards

in order to mitigate the rigour of law and to ensure that there is no unjustified detention and even the detention is not continued beyond certain period. In the instant case the detention is under the COFEPOSA Act and it has safeguards in terms of the provisions enabling scrutiny and review of detention order by more than one authority on the representation of the detenu or otherwise. By judicial interpretations, some more ancillary safeguards to effectuate the Constitutional guarantees flowing from Article 22(4) and 22(5) have been carved out. Article 22(5) guarantees dual rights (i) the right to be informed as soon as may be of the grounds on which the order has been made and (ii) the right to be afforded the earliest opportunity of making a representation against the order of detention. The duty to appraise the detenu of the right of making representation to one or more authorities who have the power to reconsider or revoke the detention order has been cast on the Detaining Authority. So also the duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasised consistently and where there is inordinate delay in disposal of the representation, the detention was set aside on that very ground. Section

3(2) of the Act casts an obligation on the State Government to forward to the Central Government within ten days the report in respect of the detention order. It is obvious that this provision is meant to enable the Central Government to address itself to the issue of detention at the earliest opportunity and to intervene in appropriate cases by exercising its powers of revocation under Section 11. Section 3(3) of the Act provides that the grounds of detention shall be furnished ordinarily not later than five days after the detention and Section 8 provides for the constitution of the Advisory Board, the procedure to be followed by the Board and the action to be taken by the Government on receipt of the opinion of the Board. Section 10 prescribes the maximum period of detention which is one or two years depending on the applicability of Section 9. Section 11 empowers the State Government or the Central Government, as the case may be, to revoke the detention order without prejudice to the power of the Detaining Authority to rescind the same under Section 21 of the General Clauses Act. Thus the scheme of the Act as well as the guarantee under Article 22 of the Constitution provides for more than one forum to reexamine or review the case of the detenu and to

afford him various means of redressal against the order of detention. The matter could be examined by the Advisory Board, the Detaining Authority, the State or Central Government acting under Section 11 or on receipt of the Advisory Board's opinion, in addition to the power of the Central Government to examine the validity of the detention acting suo motu on receipt of the report under Section 3(2). The Government in exercise of the power under Section 11 does not consider the question of sufficiency or adequacy of the grounds but it would only see whether the detention order is within the parameters of the power conferred under the statute and, therefore, the power exercised under Section 11 has been described to be a supervisory in nature in some decisions and obviously this supervisory power cannot be equated to the subjective satisfaction of the Detaining Authority or the power of the Advisory Board to examine whether there was sufficient material for detention. While examining the representation submitted by the detenu, the authorities concerned must comply with the mandate of Article 22(5) of the Constitution viz. to decide the representation at the earliest possible and without inordinate delay. Unexplained delay even of more than five days in a

given case has been held to vitiate the order of detention, irrespective of the grounds for detention being claimed to be serious. The Constitution Bench in the case of Kamleshkumar Ishwardas Patel **[(1995) 4 SCC 51]** observed in para 49 thus:

> "...We are not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. But while discharging our Constitutional obligation to enforce the fundamental rights of the people, more especially the right to personal liberty, we cannot allow ourselves to be influenced by these considerations. It has been said that the history of liberty is the history of procedural safeguards. The Framers of the Constitution, being aware that the preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate Clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be zealously watched and enforced by the Court. Their rigour cannot be modulated on the basis of the

nature of the activities of a particular person."

. A full bench of this Court in the case of Mrinal Namdev Waghmare vs. Reva Nayyar **[2001 (5) Bom. C.R. 631]** also considered the issue of delay caused in deciding the representations and the consequences thereof. By referring to a number of decisions of the Supreme Court the full bench observed:

"It is by now well settled that a detenu has a constitutional right of making a representation to the Detaining Authority, which the Detaining Authority must consider promptly. There should not be any delay in the matter of consideration, though no hard and fast rule can be laid down as to the measure of time taken by the Appropriate Authority for consideration. Whether the Detaining Authority has considered the representation with reasonable despatch is a question which must necessarily depend on the facts and circumstances of each case, it being neither possible nor advisable to lay down any

rigid period of time uniformly applicable to all cases. The Court has in each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the State Government is so unreasonably long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention thereafter illegal. The time imperative for consideration of the representation can never be absolute or obsessive. It depends upon the necessity and the time at which the representation is made. ... ... There is no hard and fast rule on any number of days, nor is there any arithmetical formula of a rigid time frame within which the representation has to be considered. It depends on the facts of each case. The holidays, including Saturdays and Sundays, cannot be added so as to enlarge the time taken and treat it as unexplained delay. Some leeway has to be left to the procedure of the Government where the file moves from one office to another till it reaches the authority which has to take decision in the

matter."

. The full bench concluded its findings on the reference in the following words:

> "...In our view, no rigid formula can be laid down in this regard. The Court must consider the totality of evidence on record, and thereafter reach a conclusion as to whether the Detaining Authority is guilty of inordinate and unexplained delay in disposing of the representation. It all depends upon the facts and circumstances of each case and, therefore, it is not advisable to lay down any rigid formula in this regard. What has to be considered by the Court is whether the Detaining Authority and its subordinates did not take prompt steps for the disposal of the representation, resulting in inordinate and unexplained delay. It matters little whether the delay was only at one stage of the consideration of the representation or at different stages. In fact, in an appropriate case, if the Court finds that at all stages the authorities concerned have not acted

promptly, it may well lead to the conclusion that the authorities have acted in a casual manner, oblivious of the special responsibility cast upon them to deal with the case of a detenu who is detained without a trial. As we have observed earlier, it depends upon the facts and circumstances of each case, and the consideration of the Court must be in the light of the totality of the material and evidence on record."

6. There is no doubt that the respondent no.2 has been conferred with the powers to pass a detention order under the Act and the impugned order was passed on 13-5-2005. His representation dated 29-6-2005 was addressed to the Advisory Board with a copy to the Detaining Authority. As per the affidavit-in-reply filed by the Detaining Authority herself, the said representation was received by her in Mantralaya on 4-7-2005 (late in the evening) by post from the Nashik Road Central Prison. On 5-7-2005 the concerned Assistant prepared a detailed note expressing the necessity to call for the parawise remarks from the Sponsoring Authority and the said note was forwarded to the Under Secretary who made

his endorsement on 5-7-2005 and forwarded the same to the Deputy Secretary who made his endorsement and submitted the papers to the Detaining Authority on the same day. He made the endorsement for calling the parawise remarks from the Sponsoring Authority and accordingly a letter was addressed to the said authority which was received on 12-7-2005. The Sponsoring Authority prepared the parawise remarks and forwarded to the Detaining Authority vide letter dated 14-7-2005 and the same was received by her on 15-7-2005. The concerned Assistant prepared a detailed note on 16-7-2005 and forwarded to the Under Secretary who in turn forwarded the same to the Deputy Secretary on the same day and the papers were placed before the Detaining Authority by the Deputy Secretary on that day itself. As per the Detaining Authority the representation was rejected on 26-7-2005. Thus it remained pending with the Detaining Authority for ten days. The question that is required to be considered by us is whether the delay of ten days has been satisfactorily explained or not. It has been pointed out that on 17-7-2005, 23-7-2005 and 24-7-2005 there were holidays. As per the full bench decision in the case of Mrinal (Supra) Saturdays and Sundays and other holidays are required

to be excluded and by so excluding these three days the delay caused comes to seven days. The Detaining Authority has pointed out that the Monsoon Sessions of the Legislative Assembly was going on during the period when the representation was pending before her and there were three such representations pending before her. The Detaining Authority being the Principal Secretary (Appeals and Security) it is obvious that she would be required to be physically present in either of the House of the State Legislature i.e. either the Legislative Assembly or the Legislative Council. Admittedly the Monsoon Sessions got over on 22-7-2005 and, therefore, we are satisfied that the delay of seven days has been properly explained and it would not in any way vitiate the detention order.

7. The reply rejecting the representation vide order dated 26-7-2005 was received by the detenu on 8-8-2005 and the learned counsel for the petitioner submitted that this pocket of delay has also not been explained and, therefore, the detenu's right under Article 22(5) has been violated. We must mention that the original record maintained in the office of the Detaining Authority was placed before us and we

have noticed that the order dated 26-7-2005 was despatched through Speed Post / Registered Post A.D. on that day at 17-22 hours. It is well known that on 26-7-2005 there was heavy rain all over Maharashtra and Mumbai city was inundated. The rails were flooded and there was no movement of rails for a few days. All the Government offices and private establishments were virtually closed for two days. The rail traffic on the Central railways from Mumbai was restored almost after one month and consequently the postal services were severely affected thereby causing delays in transportation. The record produced before us also shows that the order dated 26-7-2005 was received by the Nashik Road Central Prison on 8-8-2005 and it was served on the detenu on that day itself. This grievance raised by the detenu also does not vitiate the detention order and we, therefore, hold that the representation submitted by the detenu on 29-6-2005 was decided in time and the order rejecting the same was also dispatched by the Detaining Authority at the earliest possible i.e. on the same day. As soon as it was received by the Nashik Road Central Prison by post, the same was served on the detenu on 8-8-2005.

8. Now coming to the representations dated 12-9-2005 and 19-9-2005 submitted to the State Government through the Additional Chief Secretary (Home), it is clear that the detenu firstly sought the copies of certain documents so as to make a representation and he claimed those to be relevant documents. In the alternate he prayed for affording him an opportunity to make an effective representation at the earliest and revoke the impugned order under Section 21 of the General Clauses Act. Both the representations were same in verbatim. By following the law laid down in the case of Smt.Shalini Soni & ors. v. Union of India & ors. **[(1980) 4 SCC 544]** the State Government treated the said communications as representations. The said representations were forwarded to the State Government by post by the Nashik Road Central Prison and by the order dated 18-10-2005 the representations were rejected. The said order was served on the detenu in jail on 20-10-2005. The additional affidavit filed by the Under Secretary to the Government of Maharashtra, Home Department states that the detenu had demanded copies of three documents viz. (a) Export Declaration Form prescribed under Section 77 of the Customs Act, 1962;

(b) Export Declaration Form prescribed under FEMA; and (c) copy of the relevant regulation made under the Customs Act by the Board. Parawise remarks were called from the Sponsoring Authority vide letter dated 20-9-2005 and the Sponsoring Authority vide its letter dated 4-10-2005 sent the parawise remarks which were received in the Home Ministry on 6-10-2005 late in the evening. On 11-10-2005 the Assistant concerned prepared the note and forwarded to the Under Secretary who gave his endorsement on 13-10-2005 and forwarded to the Deputy Secretary who in turn gave his endorsement on 14-10-2005. It has also been pointed out that on 8-10-2005, 9-10-2005 and 12-10-2005 the offices were closed on account of holidays. The papers were thereafter forwarded to the Joint Secretary (Law) who made his endorsement on 14-10-2005 and forwarded to the Additional Chief Secretary (Home). The discussions with the subordinate officers were held on 15-10-2005 and after carefully going through the material on record the representations were rejected on 17-10-2005 with a further direction to supply the documents demanded by the detenu. The papers were received in the Department on 17-10-2005 and the concerned Assistant prepared the draft rejection reply and forwarded to

the Under Secretary on 18-10-2005. Accordingly the order was issued on 18-10-2005 itself. The first representation dated 12-9-2005 was received in the Home Department on 15-9-2005 and the second representation dated 19-9-2005 was received on 21-9-2005 from the Nashik Road Central Prison by post. As both the representations were virtually on the same lines the processing started together after 21-9-2005 and the parawise remarks were received from the Sponsoring Authority vide letter dated 4-10-2005.

. It is noted that the parawise remarks were called vide letter dated 20th September 2005 and it was received by the Sponsoring Authority on 26-9-2005. On 27-9-2005 the Technical Section of the Sponsoring Authority was asked to clarify whether there is any prescribed form for export declaration. On 28th September 2005 the Sponsoring Authority received a copy of the representation dated 14-9-2005 submitted by the detenu to the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi. On 3-10-2005 parawise remarks were prepared and placed before the Sponsoring Authority who communicated the same to the State Government vide letter dated 4-10-2005. It is also noted that 1st and 2nd October 2005 were holidays (Saturday and

Sunday) on account of which the office of the Sponsoring Authority was closed. Thus there was no unexplained delay caused in deciding these two representations submitted by the detenu and hence the right under Article 22(5) of the Constitution has not been denied to the detenu in that regard.

9. Coming to the issue of retractions, we have noted that the first retraction dated 1-12-2004 was only by way of an application submitted before the Court of the learned Metropolitan Magistrate, by the advocate of the detenu and it merely stated that the accused was retracting the statement recorded under section 108 of the Customs Act, 1962. It did not refer to the statement recorded on any date as such and it is seen from the record that on 13-12-2004 as well that the detenu made a statement under Section 108 of the Customs Act, 1962 and it was duly recorded by the Officer of the Air Intelligence Unit situated at Departure Wing, CSI Airport. He also made a similar statement on 14-12-2004 in question and answer form and signed the same as being true, correct and voluntary. He made voluntary statements on 16-12-2004 and 22-12-2004 as well as on 29-12-2004. On 31-12-2004 he submitted an

application to the Joint Commissioner of Customs, Air Intelligence Unit, CSI Mumbai and a copy of the same was placed before the learned Addl. Metropolitan Magistrate's 3rd Court, Esplanade in R.A. No.122 of 2004. The Joint Commissioner of Customs submitted a rebuttal application to the retraction on 18-1-2005 pointing out that when the detenu was submitted before the Court on 1-12-2004 he did not state that he was forced to make a statement on 30-11-2004 and it was recorded under Section 108 of the Customs Act, 1962. That apart, the impugned order has duly considered the application dated 31-12-2004 applying for retraction of the statements recorded under section 108 of the Customs Act, 1962 along with the rebuttal filed by the Department. It was not necessary for the Detaining Authority to give reasons as to why the retraction statement dated 31-12-2004 was disbelieved or was not found of any consequence. Thus on the count of the retraction statement made by the detenu, the impugned order cannot be held to be illegal as the retraction statement dated 31-12-2004 has been taken into consideration and the Detaining Authority was aware of the said retraction statement as well as the reply filed thereto by the Joint Commissioner before the Court of the learned

Additional Metropolitan Magistrate.

10. It was urged that the live-link between the alleged offence and the apprehension of the Detaining Authority for being satisfied on the necessity of the detention order was snapped and credible chain was broken on account of the delay. It was also contended that after the accused was released on bail on 10-12-2004 there was no further occasion for him to indulge in any alleged activities of smuggling out foreign exchange or Indian currency notes more so when his passport was already impugned. We are not impressed by these submissions. The articulations which were adopted by the detenu for hiding the foreign exchange as well as the Indian currency notes did speak in volumes. He had made 23 foreign trips from 12-4-2004 to 30-11-2004. In the months of June, October and November he made four trips each. The frequency of his departure from the International Airport indicated that almost every week he was flying across the Indian borders. It was not impossible for the detenu to continue the said activity of smuggling the Indian currency or foreign currency out of India through someone else even though his passport was surrendered. The link of the

foreign exchange smuggling could not be accepted to be snapped only because the detenu's passport was surrendered. The Detaining Authority was aware of the nexus between the date of the incident and the passing of the detention order as well as the object behind such an order. The impugned order does not suffer on the count of non-application of mind by the Detaining Authority nor can it be called as a punitive order. The Advisory Board has also recorded its satisfaction regarding the obtaining circumstances necessitating the order of detention passed by the Detaining Authority and the report of the Advisory Board does support the contentions of the Detaining Authority that there were sufficient and just reasons for issuing the order of detention.

11. Lastly coming to the point of the delay caused in passing the detention order and the alleged failure to explain the delay caused in every pocket while passing the said order, it would be necessary to consider the affidavit-in-reply filed by the Detaining Authority as well as the Assistant Commissioner of Customs. The foreign currency and the Indian currency was seized on 30-11-2004 and the detenu was taken in custody. He was released on bail

on 10-12-2004 whereas the order of detention has been passed on 13-5-2005 i.e. after about five months from the date of his release by the Court. As noted earlier, after he was released on bail on 10-12-2004 his statements were recorded on 13-12-2004, 14-12-2004, 16-12-2004, 22-12-2004 and 29-12-2004. He submitted an application for retraction before the Additional Metropolitan Magistrate on 1-12-2004 through his Advocate and addressed another application dated 31-12-2004 to the Joint Commissioner setting out his retraction. This was replied to by the Joint Commissioner before the Court on 18-1-2005. In the meanwhile the screening committee forwarded the proposal on 31-1-2005. The reply was also given to the detenu on 3-1-2005 by the sponsoring authority to the retraction letter dated 31-12-2004. The sponsoring authority had taken a decision on 7-1-2005 to prepare and forward the proposal for the detention of the detenu. The screening committee received the same on 13-1-2005 and it was placed in its meeting held on 18-1-2005. On its approval the proposal was forwarded with the minutes. The proposal was received with the minutes by the Sponsoring Authority on 2-2-2005 and thereafter it came to be forwarded to the Detaining

Authority on 11-2-2005. It was received by the Detaining Authority on 14-2-2005 and the Detaining Authority called for discussion the Investigating Officer on 5-3-2005. The proposal was running into 105 pages and there were holidays on 19-2-2005 and 20-2-2005 to the office of the Detaining Authority. The concerned Assistant scrutinised the proposal and prepared a detailed note and submitted for its approval to the Under Secretary on 23-2-2005. The Under Secretary made his endorsement on 24-2-2005 and forwarded it to the Deputy Secretary who made his endorsement on 25-2-2005 and forwarded the papers to the Detaining Authority. 26-2-2005 and 27-2-2005 were holidays. The Detaining Authority considered the proposal on 2-3-2005 and found some discrepancies and, therefore, instructed the Investigating Officer for a meeting on 5-3-2005. A detailed note showing the discrepancies in the proposal was prepared on 7-3-2005 by the Under Secretary and submitted to the Detaining Authority. A detailed report was called from the Sponsoring Authority in regard to the discrepancies as per the endorsement dated 10-3-2005. Vide his letter dated 21-3-2005 the Sponsoring Authority had called for all the documents in order to rearrange and prepare fresh sets and accordingly

the same were returned to the Sponsoring Authority which in turn submitted the papers back to the Home Ministry vide its letter dated 28-3-2005 and the Home Ministry received the same on 30-3-2005. Thus from 31-3-2005 to 30-4-2005 the proposal appears to have remained without being attended to or remained dead. On 1st May 2005 it was a holiday and on 2nd May 2005 the concerned Assistant prepared a detailed scrutiny note and forwarded to the Under Secretary who made his endorsement on the same day and forwarded it to the Deputy Secretary. The Deputy Secretary made his endorsement on 5-5-2005 and submitted the papers to the Detaining Authority. The Detaining Authority approved the proposal of the Sponsoring Authority and endorsed for the issuance of the detention order on 6-5-2005. The concerned Assistant prepared the draft note and forwarded to the Under Secretary on 10-5-2005. The Deputy Secretary made his endorsement and submitted to the Detaining Authority and finally the impugned order is passed on 13-5-2005.

12. The question that arises for our consideration is whether the pocket of delay caused from 31-3-2005 to 30-4-2005 has been explained and in case it has not been explained satisfactorily, whether such a

delay by itself would vitiate the order of detention. The Detaining Authority has stated in her affidavit-in-reply that during the period from 30-3-2005 to 2-5-2005 there were 13 proposals pending before her for scrutiny and in between there were ten holidays. So the delay of about 20 days remained to be explained and that is attributed to the pendency of 13 proposals before the Detaining Authority. Could this be the ground for declaring the order of detention as void ab initio? The answer is in the negative.

. The learned APP rightly relied upon the decision in the case of Rajendrakumar Natvarlal Shah v. State of Gujarat & ors. **(AIR 1988 SC 1255)**. The effect of the delay caused in passing the detention order cannot be equated with the delays caused in deciding the representations submitted to the Detaining Authority, the State Government as well as the Central Government. Clarifying for the guidelines of the High Court, the Apex Court in para 10 stated thus:

> "Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be drawn between the delay in

making of an order of detention under a law relating to prevention detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the Courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the Detaining Authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the Court finds that the grounds are 'stale' or illusory or that there is no real nexus between the grounds and the impugned order of detention..."

. Excluding the ten holidays, on the face of it there was a delay of about 20 days in passing the impugned order on 13-5-2005. The Detaining Authority stated that in all 13 proposals for similar purpose were pending before her during that period. As stated earlier, the detenu had made about 23 foreign

trips between the period from 12-4-2004 to 30-11-2004 and, therefore, it could not be said that the grounds for detention had become stale or illusory. There was sufficient material before the Detaining Authority to reach a conclusion that the detenu was smuggling foreign exchange and Indian currency notes in an organised manner and the explanation that he was carrying Indian currency for business purposes could not find support for acceptance. But for the passport being impounded, the detenu himself could not undertake any foreign trip but there is no reason to believe that he could not have managed the same activity through a third person if he was not taken in detention. Under the circumstances, we do not find that the Detaining Authority failed to explain the delay of 20 days satisfactorily at the first instance and in any case even such a delay in passing the detention order cannot be the sole reason to vitiate the order of detention. We hereby reject the challenge to the detention order on the ground that it was passed belatedly or it was passed for stale reasons or that there was no real nexus between the grounds and the impugned order of detention.

13. In the premises, the challenge to the detention order fails on all counts and, therefore, the petition deserves to be dismissed. The same is hereby dismissed and rule is discharged.

(SMT.R.S.DALVI,J.) (B.H.MARLAPALLE,J.)